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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,928	02/29/2000	Bert Whitmore Elliott	24673A	1357

7590 09/16/2004

OWENS CORNING  
2790 COLUMBUS ROAD  
BUILDING 54  
GRANVILLE, OH 43023

EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/515,928

Applicant(s)

ELLIOTT, BERT WHITMORE

Examiner

Steve M Varner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

The advisory action of 6/7/02 is withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 9, 10, 17, 18, 25, 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. in view of Blanpied.

Regarding claims 1, 9, 10, 17, 25, 26; Weaver et al. shows a laminated shingle (Title). It has an overlay member (30) with tabs (36) with granules (Col. 1, Line 30-40) and an underlay member (50) attached. (Fig. 1) It has tabs of relatively or not absolutely uniform color (Abstract). It is obvious that the tabs would have substantially which implies not absolutely uniform color. Please see Response to Arguments.

Blanpied has tabs of different colors, which are not substantially uniform in color. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Weaver et al. with the different color tabs which are not substantially uniform in color of Blanpied because shingles such as Weaver et al. are often used in a variety of architectural settings where it would be desirable to have different colors for aesthetic reasons. It would be an obvious design choice to align the color blends horizontally between the tabs and cut outs to achieve a certain architectural affect. It would have been an obvious design choice to use tabs of

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different colors each with substantially uniform color for aesthetic reasons. It is common knowledge that shingles are used multiply to form a covering for a roof. It would have been an obvious design choice to have a 60% of plurality of tabs have a first background color comprising a light gray, approximately 25% of the plurality of tabs have a second background color, comprising dark gray, and about 15 percent of the tabs have a third color other than gray to simulate slate. It would have been an obvious design choice to choose the third color comprises purple or any other color so desired for aesthetic reasons.

Regarding claim 2, Weaver et al. shows dark underlay granules. (Fig. 1)

Regarding claim 18, Weaver et al. shows the overlay cutouts exposing portions of the underlay members (Fig. 1).

Claims 3, 11, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. in view of Blanpied in further view of Stapleton.

Regarding claims 3, 11, 19, Weaver et al. in view of Blanpied shows the basic claimed structure. Weaver et al. in view of Blanpied does not show a layer of dark granules on the front surface. Stapleton shows a layer of dark granules on the front surface. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a layer of dark granules for aesthetic reasons.

Claims 4-6, 8, 12, 13, 15, 16, 20, 21, 22, 24, is rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. in view of Phillips.

Regarding claims 4, 12, 20, Weaver et al. does not show a layer of dark granules applied to the lower edge and upper edge of the tabs of the overlay member. Phillips

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shows a layer of dark granules applied to the lower edge and the upper edge of the tabs of the overly member. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply dark granules randomly for aesthetic reasons.

Regarding claims 5, 13, 21, Weaver et al. does not show rectangular tabs. Philips shows rectangular tabs. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Weaver et al. with the rectangular tabs of Philips for aesthetic reasons.

Regarding claims 6, 16, 22, Weaver et al. does not show co-linear overlay/underlay members. Philips does show these co-linear. (Fig. 1) It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Weaver et al. with the co-linear overlay/underlay members of Philips for aesthetic reasons.

Regarding claims 8, 15, 24, Weaver et al. does not show varying tab width. Philips shows varying tab width. (Fig. 1) It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Weaver et al. with the varying tab widths of Philips for aesthetic reasons.

Claims 7, 14, 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. in view of Phillips in further view of Bondoc et al.

Regarding claims 7, 14, 23, Weaver et al. does not show beveled edges. Bondoc et al. shows corresponding beveled edges on the overlay and underlay members. It would be obvious to one of ordinary skill in the art at the time the invention

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was made to modify Weaver et al. with the beveled edges of Bondoc et al. for aesthetic reasons.

***Response to Arguments***

Applicant's arguments filed 4/23/02 have been fully considered but they are not persuasive.

Applicant argues that Stapleton and Blanpied fail to include the limitation of substantially uniform in color.

Weaver et al. shows relatively uniform color, which is not absolutely uniform. Substantially also implies not absolutely uniform. Even if substantially is taken as a narrower word than relatively, it would have been obvious to have substantially uniform color for aesthetic reasons. The improvement from relatively to substantially uniform color would be a matter of degree within ordinary skill in the art.

Applicant argues that the uniform color has a significant utilitarian functional value to look like a slate roof to command a premium price as a substitute for slate.

Applicant argues that the purpose of the darker and lighter shading is to give the shingle a perception of depth, which is utilitarian.

Examiner maintains that to make something look like something else is an aesthetic design choice and is within ordinary skill in the art especially when the attribute changed is merely the uniformity of color or the shading.

Examiner notes that the color blend is substantially uniform in color and produced by granules of different color (Spec. Page 5, Line 15-25). This is the same method used to make the relatively uniform color of Weaver et al. (Col. 3, Line 60-end).

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It follows that the method of Weaver et al. could be used to form substantially uniform color.

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-08390839. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

September 10, 2004



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600